



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

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Issued by the Department of Transportation
on the 25th day of August, 1998

LOVE FIELD SERVICE
INTERPRETATION PROCEEDING

Docket OST-9% 4363 - /

ORDER INSTITUTING PROCEEDING

Operations at airports used by commercial airlines in the United States are subject to various requirements imposed by federal statutes. For example, one statutory provision, 49 U.S.C. 47107, requires certain assurances ~~from~~ airports that obtain federal grant funds. Another provision, 49 U.S.C. 41713, preempts state and local regulation of airline rates, routes, and services, subject to an exception for the exercise of proprietary powers by a state or local government that owns an airport. In addition, airline operations at Love Field, an airport owned and operated by the City of Dallas, are restricted by federal statute, Section 29 of the International Air Transportation Competition Act of 1979, as amended. The Department of Transportation, including the Federal Aviation Administration ("FAA"), is responsible for administering these statutes.

Last year Congress enacted legislation liberalizing the statutory restrictions on interstate airline passenger operations at Love Field. Congress' action has generated a substantial amount of litigation. Several of the parties in the various lawsuits have asked us to help end the litigation. Their proposals have included mediation by the Department and issuing a decision ruling on the major issues underlying the litigation. While our preferred outcome would be a settlement of the dispute over Love Field service that would be acceptable to all of the parties, we believe that such an outcome is unlikely. In addition, the litigation is moving forward without the benefit of the Department's position on several of the key legal issues. Hence, we think that the most effective step we can take will be to issue a ruling on the major federal law issues raised by the dispute, which involve the interpretation of federal statutes whose administration is the responsibility of this Department.

We are therefore beginning this proceeding to obtain the parties' comments on those issues and to issue an order interpreting those statutes. We note that thirteen years ago we held a similar proceeding in order to resolve other disputes on the meaning of the statutory restrictions governing Love Field operations. Love Field Amendment Proceeding, Order 85-12-8 1 (December 31, 1985), aff'd, Continental Air Lines v. DOT, 843 F.2d 1444 (D.C. Cir. 1988).

Statutory and Litigation Background

The restrictions on Love Field service were originally imposed by Section 29 of the International Air Transportation Competition Act of 1979, P.L. 96-192, 94 Stat. 35, 48-49

(1980) ("the Wright Amendment"). The provision enacted in 1997, section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998, P.L. No. 105-66, 111 Stat. 1425, 1447 (October 27, 1997) ("the Shelby Amendment"), changed the restrictions in two respects. It added three states -- Kansas, Mississippi, and Alabama -- to the area within which flights from Love Field could be operated with large aircraft and clarified the meaning of the existing exemption for flights operated with aircraft with a capacity of no more than 56 passengers. Before the Shelby Amendment, the Wright Amendment allowed unrestricted scheduled passenger service by large aircraft only within Texas and the four states bordering on Texas. The Wright Amendment did not restrict service by aircraft having a capacity of no more than 56 seats.

The Shelby Amendment has led to disputes over whether airlines may operate the additional types of service permitted by the Shelby Amendment. The City of Fort Worth filed a suit against the City of Dallas, Legend Airlines, and others to block additional service at Love Field. City of Fort Worth, Texas v. City of Dallas, Texas, et al., Tarrant County District Ct. No. 48-1 71109-97 (filed October 10, 1997). American Airlines and the Dallas-Fort Worth International Airport Board ("DFW Board") are supporting Fort Worth's position in this case.

The City of Dallas then sued this Department and the City of Fort Worth to obtain a declaratory judgment that it may **not bar** airlines from operating such service. City of Dallas, Texas v. Department of Transportation et al., N.D. Tex. No. 3-97CV-2734-T (filed November 6, 1997). To protect plans to begin flights from Love Field to Houston and Cleveland, Continental Airlines and Continental Express filed their own suit, Continental Airlines and Continental Express v. City of Dallas and City of Fort Worth, N.D. Tex. No. 398CV1187-R (filed May 19, 1998). The federal court has consolidated the suit filed by Dallas with the suit filed by Continental and Continental Express.

Southwest Airlines similarly moved on March 27, 1998, to reopen an earlier proceeding to ensure its ability to operate additional service from Love Field, Southwest Airlines and Texas Aeronautical Comm'n v. Texas International Airlines et al., Order Granting Permanent Injunction (February 23, 1982), N.D. Tex. No. CA 3-75-0340-C.

At the request of Fort Worth and the DFW Board, the state court has issued an injunction barring Continental Express **from** operating Love Field-Cleveland flights until the court issues a final decision on the merits.

The state court proceeding is scheduled for trial in January 1999, but the judge has invited parties to file motions for summary judgment this month. Dallas has asked the state court to either join the Department as a party or dismiss or abate the litigation. The district court has consolidated the federal suits by Continental and Dallas and has scheduled the final pre-trial conference for May 28, 1999. We understand that the federal court denied Southwest's request for an order enforcing its rights after Fort Worth represented that it had no intention of interfering with Southwest's operations.

In addition to the litigation in Texas, Fort Worth, American, and others are opposing Legend's application for certificate authority under 49 U.S.C. 41102, Docket OST-98-3667.

Finally, the Department recently amended the condition restricting Love Field service in US. airlines' interstate certificates to reflect the changes made by the Shelby

Amendment, Order 98-7-6 (July 8, 1998). As explained by the order, the certificate . amendments were a ministerial action that did not require a decision on other issues, such as those raised in the pending lawsuits.

Our Decision to Issue a Declaratory Order

As noted, several of the parties have requested us to take steps to help resolve the dispute. Fort Worth asked us to mediate the dispute. Dallas and Legend urged us to issue a decision ruling on the federal law issues presented by the lawsuits. We have also received letters from Senator Trent Lott, the Majority Leader of the United States Senate, and Congressman Bud Shuster, the Chairman of the Committee on Transportation and Infrastructure of the United States House of Representatives, urging us to take action to protect the important federal interests at stake.¹

The Secretary has encouraged the two cities to resolve the dispute through negotiations. While a private settlement would be the best outcome, some of the parties have advised us that they believe no settlement is possible, since the parties' interests are irreconcilable. The mediator appointed by the state court, moreover, has stated that a settlement does not appear possible.

As a result, we have decided that we can best help resolve the dispute by issuing a ruling on the federal law questions that are the principal issues underlying the litigation. A ruling by us on these issues should eliminate much of the pending litigation, which has already imposed substantial costs on the parties. A settlement of the dispute seems unlikely without a ruling by the Department on the key federal law issues. As noted above, we took similar action in 1985 in order to resolve disputes over the interpretation of the Wright Amendment. Love Field Amendment Proceeding, Order 85- 12-8 1 (December 3 1, 1985).²

The Department's issuance of a ruling on the federal law questions underlying the dispute is additionally appropriate, since those questions involve statutes which this Department is responsible for administering: the statutory restrictions on Love Field service which the Department is obligated to enforce and the provisions governing the rights and obligations of airports and the state and local governments that own and operate airports. Cf. Northwest Airlines v. County of Kent, 5 10 U.S. 355, 366-367 (1994); New England Legal Foundation v. Massachusetts Port Authority, 883 F.2d 157, 171-173 (1st Cir. 1989).

¹ A copy of their letters and the Secretary's response will be placed in the docket for this proceeding.

² The Department's General Counsel, Nancy E. McFadden, on June 30 sent David N. Siegel, the President of Continental Express, a letter addressing some of the issues raised by the requests to enjoin Continental Express' proposed flights **from** Love Field to Cleveland. Her letter stated that the Department has not addressed the precise issues of whether federal law would allow Dallas to restrict Love Field service as a result of its agreement with Fort Worth and whether the Wright and Shelby Amendments allow airlines to operate **longhaul** Love Field flights with regional jets.

The Issues To Be Resolved

The dispute primarily turns on the claims by Fort Worth and others (i) that Dallas' contractual obligations to Fort Worth require Dallas to prohibit airlines from operating the types of service permitted by the Shelby Amendment, (ii) that some of the services recently proposed by Legend and Continental are not permitted by the Wright and Shelby Amendments, and (iii) that certain agreements executed by carriers operating at DFW prohibit those carriers **from** operating interstate service from Love Field, even service that complies with the Wright and Shelby Amendment restrictions. To support its contract claim, Fort Worth cites the 1968 Regional Airport Concurrent Bond Ordinance ("the Bond Ordinance"), which committed both cities to end scheduled passenger airline service at their local airports, including Love Field, so that all such service would be operated **from** DFW, with minor exceptions. The proposals to operate **longhaul** Love Field service with regional jets or reconfigured large aircraft have generated complaints that the proposed services are not within the statutory exception for flights operated with aircraft with a capacity of no more than 56 passengers.

We therefore plan to rule **on** the following federal law issues:

- (1) Whether the statutory preemption provision, 49 U.S.C. 41713(b), prohibits one airport owner by contract with a second airport owner from maintaining a commitment by the latter to limit airport operations at its own airport, and whether such a restriction falls within the proprietary powers exception in 49 U.S.C. 41713(b)(3);
- (2) Whether the Wright and Shelby Amendments preempt the City of Dallas' ability to restrict service at Love Field except as consistent with the terms of those amendments;
- (3) Whether the Shelby Amendment authorizes carriers using jet aircraft with a passenger capacity of 56 seats or less to engage in **longhaul** service **from** Love Field to any city in the United States; and
- (4) Whether a major carrier may bind itself through its use agreements with the DFW Airport Board that it will not exercise the authority granted by its certificate to operate flights from Love Field that are consistent with the Wright and Shelby Amendments.

Whether the various proposed services are allowed by the Shelby and Wright Amendments appears to be a straightforward statutory interpretation issue. Whether Dallas' contractual commitments to Fort Worth allow Dallas to restrict service at Love Field, either by barring the operation of the services authorized by the Shelby Amendment or by imposing other restrictions, such as a perimeter rule, on Love Field operations, seems to depend primarily on the meaning of 49 U.S.C. 41713(b). That section includes the statutory provisions on preemption and the proprietary rights of airport owners. This issue may also involve the relationship between that section and the Shelby Amendment.

We plan to address only the federal law issues raised in the current litigation, which essentially involve the questions of Dallas' ability to allow airlines to operate the Love Field service authorized by the Shelby Amendment and the airlines' ability under federal

law to operate longhaul flights from Love Field. We will not consider now whether Dallas may take other action to limit the scale of operations at Love Field to alleviate Fort Worth's concerns that operations authorized by the Shelby Amendment may eventually lead to a dramatic increase in activity at Love Field.

Procedures

Before we issue a decision on the issues underlying the litigation, we want to give all interested parties an opportunity to present their views. We do not want to make a decision without hearing each party's arguments. We also wish to issue a ruling promptly in order to end the pending litigation insofar as it involves the two federal law issues we plan to address. As indicated, the state and federal trial courts have adopted schedules calling for a decision on the merits next year. We also assume that at least some parties will file summary judgment motions in the cases within a few months.

We are therefore establishing a schedule for interested parties to submit their views which will enable us to issue an opinion soon. We think our schedule should be reasonable; since the parties have already extensively briefed the issues in their filings in the various lawsuits and in the proceedings on Legend's certificate application, Docket OST 98-3667, and American's certificate amendment application, Docket OST-98-38 17.

For these reasons, we ask interested parties to submit their views to us within two weeks of the date of this order. We will consider reply comments submitted within one week of the due date for the original submissions. We are serving this order on counsel and representatives for the City of Dallas, the City of Fort Worth, the Dallas-Fort Worth International Airport Board, American Airlines, Continental Air Lines and Continental Express, Southwest Airlines, and Legend Airlines listed in the attachment to this order.

ACCORDINGLY:

1. We institute the Love Field Service Interpretation Proceeding;
2. Comments must be filed within fourteen calendar days of the date of service of this order; and
3. Reply comments must be filed within seven calendar days of the due date for comments.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
And International Affairs

(SEAL)

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